IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.75 OF 2006

FROM

NOTICE OF MOTION NO.3332 OF 2004

IN

BCCC S.C. SUIT NO.4637 OF 2004

ALONG WITH

CIVIL APPLICATION NO.101 OF 2006

M/s.Madhu Construction Pvt.Ltd. ...Appellants

Versus

Mr.Navinchandra M.Dedhia & Ors. ...Respondents

.....

Mr.V.A.Thorat, Sr.Counsel with Mr.Sharukh Kathawala i/b Madhavi Tavanandi for Appellants.

Mr.Snehal K.Shah & Mr.Ramachandran i/b Narayanan & Narayanan for Respondents.

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CORAM: A.M.KHANWILKAR, J.

FEBRUARY 15, 2006.

P.C.

1. Heard Counsel for the parties.

2. In view of the submissions made by the Counsel for the Appellants, it is unnecessary to dwell upon all the aspects of the matter, which request I am inclined to accept, having regard to the peculiar facts of the present case.

3. During the course of argument, Counsel for the Appellants relying on the direction issued by this Court in the earlier round of litigation being Appeal from Order No.42 of 2005 dated July 15, 2005, in particular, Para 11 would contend that the Appellants have not caused to file undertaking of the concerned purchasers of the row houses as they are not put in possession so far. Insofar as this submission is concerned, the language of Para 11 of order dated July 15, 2005 may give that impression but the spirit of that order, in my opinion, was requiring the Appellants to cause to file undertaking of all the persons who have already purchased the row houses or intending to purchase the same.

4. Be that as it may, as the Counsel for the

Appellants, on instructions, states that the Appellants may suffer the impugned order, if this Court was to show indulgence to the Appellants by directing the Trial Court to expedite the hearing of the Suit. This request is made especially because the construction of row houses is fully complete and third party interest has already been created therein, though the purchasers have not been put in possession so far. Besides, it would be impractical for the Appellants to preserve the property unless the same was to be occupied by them.

5. In this backdrop, request is made by the Appellants that the Trial Court, in the circumstances, be directed to expedite the Suit. Insofar as this request is concerned, Counsel for the Respondents have no objection for expediting the hearing of the Suit. According to the Respondents, however, the plaint has been amended and the Appellants/Defendants have still not filed their additional written statement in response to the amended plaint. In other words, the pleadings are not fully complete. Keeping those aspects in

mind, as the Appellants through Counsel have assured that they will file additional written statement within two weeks from today before the Trial Court and would extend the cooperation to the Trial Court for early disposal of the Suit, in my opinion, in the interest of all concerned, for the nature of controversy involved, it will be appropriate to direct the Trial Court to finally dispose of the Suit as expeditiously as possible, preferably by the end of December 2006.

6. In the event, the Trial Court is already busy with any other High Court or Supreme Court expedited matters, which orders have been passed in prior point of time, it will be open to the Trial Court to seek suitable directions from this Court for extension of time, which will be considered appropriately. However, if there are no High Court or Supreme court expedited trials pending before the concerned Trial Judge, the present Suit will proceed on day-to-day basis to ensure early disposal within the time frame as mentioned earlier.

7. Needless to observe that the Trial Judge will decide the suit on its own merits in accordance with law, uninfluenced by any of the observations made in the impugned order or for that matter, the earlier order passed by this Court at the interlocutory stage.

8. Appeal and the cognate Civil Application disposed of on the above terms.

A.M.KHANWILKAR, J.